

AG Contract No.: KR04-1080TRN
ADOT /JPA File No.: JPA 03-132
Project: I-10, Marsh Station
Traffic Interchange
TRACS: H2390 & H2391
BUDGET SOURCE ITEM NO.:14607,
27702, 73308

AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE UNION PACIFIC RAILROAD COMPANY

THIS AGREEMENT is entered into this date as of July 17th, 2006
between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION
(the "State") and the UNION PACIFIC RAILROAD COMPANY, a Delaware Corporation (the "Railroad").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-408 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Railroad is empowered to enter into this Agreement, has resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Railroad, as confirmed by the Secretary's Certificate attached hereto as **Exhibit A**, and made a part hereof.

3. The Railroad desires to relocate a portion of their Lordsburg Subdivision rail line to eliminate two Interstate I-10 grade separation structures. The project site is depicted on Exhibit B. This construction will be completed in three phases: the new Railroad grade & drain phase (Phase I), the new rail placement phase (Phase II), and the existing rail and bridge removal phase (Phase III). The State does not have any present plans to remove the Amole grade separation structure located at ADOT I-10 milepost 292.35 in accordance with the 1980 Agreement between the Railroad and the State.

The relocation of the rail line 1.) reduces the costs of maintenance of Interstate I-10; 2.) increases flexibility in planning improvements to I-10; and 3.) improves safety to the traveling public.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1A, Phase I, New Railroad Grade and Drain

The State shall:

a. Fund the relocation of all utility lines to UPRR standards that conflict with the Railroad grade and drain construction including but not limited to Kinder Morgan pipelines.

b. Use commercially reasonable efforts to prepare by November 1, 2005, for Railroad review and approval, the Geotechnical Report for the determination of foundation requirements, slope stability and shrink/swell factors associated with the Railroad grade and drain work. Completed.

c. Use commercially reasonable efforts to prepare by July 1, 2006, for Railroad review and approval, the Hydrology Report for Railroad use in designing the drainage features associated with the Railroad grade and drain work.

d. Fund drainage design for construction of the Railroad grade and drain work.

e. Review and approve all Railroad design plans, specifications and estimates required for the Railroad grade and drain construction contract, and reimburse Railroad upon approval, which approval shall not be unreasonably withheld or delayed, if the plans and specifications are in accordance with Railroad's standards.

f. Be responsible for any design consultant claims for extra compensation due to delays or whatever reason, attributable to the State, for all work associated with the Railroad grade and drain elements.

g. Advertise and award a construction contract that includes construction of the Railroad grade and drain work in a way as not to purport State ownership of the railroad grade and drain work or elements of the work. This work is proposed to be constructed by the end of Fiscal year 2009. State shall administer the contract, and make all payments to the contractor(s) for all costs to complete all Railroad grade and drain construction elements. State shall provide review and approval of changes during construction of the Railroad grade and drain elements, and provide to the Railroad proposed changes during construction of the Railroad grade and drain elements for Railroad's review and approval. Upon completion of construction of the Railroad grade and drain elements, State shall coordinate final inspection of the project with the Railroad (assisted by the State's Project Manager and/or Resident Engineer). The State will provide grade and drain elements as-built plans to the Railroad and quality control documents to the Railroad.

h. Reimburse the Railroad for:

- All reasonable costs and expenses in connection with acquiring the New Railroad Property (defined in section 1B b. below) including (by way of illustration only and not limitation) survey services, appraisal services, application fees, title work, travel expenses, consultant's and contractor's fees, environmental studies, land use permitting, legal fees, purchase consideration, and closing costs.
- All environmental work including mitigation measures required for the construction of the Railroad grade and drain work. This does not include the activities described in II.3B.a.
- All environmental work including mitigation measures required for the utility relocation work.
- All permits and fees associated with the railroad grade and drain work and the utility relocation work including any costs associated with the relocation of the Kinder Morgan facilities. Railroad shall structure the Kinder Morgan Agreement for lump sum payment only with no periodic payments.
- Design of grade and drain project.

1B, Phase I, New Railroad Grade and Drain

The Railroad shall:

a. Be responsible for preparation and submittal of all environmental documents required by Federal, State or Local Agencies for acquisition of the New Railroad Property (as defined in 1B b. below) and the removal of the Pantano Bridge within ADOT right of way including the approaches on both sides plus abutments per Exhibit C (Railroad Bridge 1014.10 Lordsburg Subdivision).

b. Acquire, on terms satisfactory to the Railroad, real property for the rail line to be relocated pursuant to this Agreement, including, but not limited to, land for trackage, grading, drainage, access, switches, turnouts, signals, signal cabinets, temporary construction activities, utility relocations, necessary easements and crossing rights (collectively, the "New Railroad Property"), with the State to reimburse as provided in paragraph 1.A.h. In connection with the Railroad acquiring the New Railroad Property, it is understood and agreed between the parties that: 1) whenever reasonably possible, the New Railroad Property shall be 200 feet in width, and 2) in the event it is necessary to acquire land materially in excess of the 200 foot width (for example, if required by the Arizona State Land Commission to avoid irregularly shaped parcels) then the parties hereto shall first confer regarding the economic feasibility of the proposed acquisition, its impact on the project, and possible disposition of the excess property following acquisition. Railroad shall structure all Agreements for lump sum payment only with no periodic payments.

c. Provide access to the utility companies' contractors for relocating utilities in conflict with the Railroad grade and drain construction.

d. Provide access to the State and State's contractors for Railroad grade and drain construction and administration.

e. Use commercially reasonable efforts to provide plan, profile and final footprint for the grade and drain work within sixty (60) days after receipt of the geotechnical data and hydrology report from ADOT.

f. Provide, at no cost to the State, an easement for crossing Railroad right of way for the Marsh Station Road Railroad crossover and the grade separation structure as delineated on the State's construction plans. The State shall prepare a Construction and Maintenance Agreement for Railroad review and approval on a form previously agreed on by the State and Railroad.

g. Use commercially reasonable efforts to acquire the New Railroad Property and make it available to the State for railroad and grade work, and complete all utility relocations, by December 31, 2007.

h. Provided State has provided the Hydrology Report by July 1, 2006, use commercially reasonable efforts to prepare for State review and approval all design plans, specifications and estimate required for the Railroad grade and drain construction, sealed by an Arizona registered engineer, on or before September 30, 2006, with the State to reimburse Railroad upon approval which approval is not to be unreasonably withheld or delayed if said plans and specifications are in accordance with Railroad's standards. This design shall include drainage design.

i. Be responsible for any design or contractor claims for extra compensation due to delays or whatever reason attributable to the Railroad, for all work associated with the construction of the Railroad grade and drain elements. Notwithstanding the foregoing, Railroad shall not be responsible for such claims if the delays are due to circumstances beyond the reasonable control of the Railroad.

j. Allow earthwork waste from the Railroad grade and drain project to become the property of the State.

k. Provide review and approval of changes during construction of the Railroad grade and drain project.

l. Upon completion of construction, the work is subject to inspection by the Railroad's designated project engineer, who shall have full power to reject any work, material and/or equipment, which, does not conform to the Railroad's plans and specifications. The failure of the Railroad Representative to detect faulty or defective workmanship and/or material during the progress of the work shall not be construed as acceptance thereof. If deemed satisfactory, Railroad's acceptance shall be in writing; and Railroad shall accept all ownership and maintenance responsibilities for the Railroad grade and drain elements. State will assign to the Railroad any warranties or guarantees from its contractors express or implied.

2A, Phase II, New Rail Placement

The State shall:

a. Following the Railroad's written acceptance of the State constructed Railroad grade and drain elements and after receipt of an invoice by the Railroad the State shall remit \$4,607,000 to the Railroad for inclusion into the Railroad track relocation project. This amount to be paid is in addition to any payments made in Phase I.

b. Construct the Marsh Road crossover and grade separation structure at the State's sole expense.

2B, Phase II, New Rail Placement

The Railroad shall:

a. Invoice the State, between July 1, 2008 and June 30, 2009, for a total amount not to exceed \$4,607,000.00 and include said funds into the new relocated track project to be constructed by the Railroad. This lump sum amount shall be considered full and final payment by ADOT for its share of the cost of installation of new track. This amount to be paid is in addition to any payments made in Phase I.

b. Be responsible for all costs exceeding the State's participation amount related to the construction of the Railroad's new track placement.

c. Be responsible for the design, construction and construction administration of the new track and signal facilities.

d. Be responsible for any claims brought by Railroad's designers or contractors for extra compensation due to delays or whatever reason for all work associated with the construction of the new track and signal facilities.

e. Accept ownership and maintenance responsibilities for the new relocated track.

f. Endeavor to complete construction on the new track placement no later than nine months after the Railroad accepts the grade and drain phase to allow for removal of the existing Pantano Railroad Bridge.

g. The Railroad may acquire the materials required for the construction of the new rail placement at any time after execution of this Agreement, and may be reimbursed at any time after July 1, 2008 or the date the grade and drain construction is advertised for bid, whichever is later. The Railroad shall not be entitled to any increase in reimbursement for any increase in materials prices, labor costs, or any other cost increases, or any other reason. Any payments made under this paragraph shall be counted as a credit against the amount to be paid by the State in the Lump Sum Payment.

3A, Phase III, Existing Bridge and Rail Removal

The State shall:

- a. Grant the Railroad a no-cost permit to remove the Pantano Railroad Bridge and other Railroad improvements in the State's right of way.
- b. Reimburse Railroad for costs of the environmental studies and permits for removal of the Pantano Railroad Bridge and other Railroad improvements in the State's right of way plus environmental mitigation within State's right of way.
- c. Review the demolition plan and traffic control plan submitted by the Railroad, to State standards.
- d. Reimburse Railroad for actual and reasonable costs of removal of the bridge, approaches, abutments including associated traffic control per Exhibit C. These costs are subject to audit. These costs are currently estimated in the amount of \$150,000.00.

3B, Phase III, Existing Rail and Bridge Removal

The Railroad shall:

- a. Be responsible for all performance of environmental documents, clearances and costs on the land occupied by the existing Railroad track, if any, to be abandoned by the Railroad between Railroad MP 1013.95 to MP 1019.02.
- b. Accomplish the removal of the existing Pantano Railroad Bridge and Railroad tracks, signal structures and ballast ("Railroad Facilities") in the State's right of way. The Railroad Facilities shall remain the property of the Railroad and shall be removed from within the limits of the I-10 State right of way. Railroad shall be responsible for mitigation work, if any, required for the I-10 State right of way, assuming a use as a state highway subject to reimbursement by the State.
- c. Invoice the State for actual and reasonable costs of removal of the bridge, approaches, abutments including associated traffic control per Exhibit C. Invoice the State upon completion of the work.
- d. Be responsible for the preparation of environmental documents for the removal and abandonment of the existing Pantano Railroad Bridge and other Railroad improvements in the State's right of way, with State to reimburse Railroad for preparation of documents.
- e. Be responsible for the design, construction, administration and all costs associated with the removal of any existing track features outside the State's right of way.
- f. Following the removal of the Pantano Railroad Bridge (Railroad Bridge 1014.10, Lordsburg Subdivision) pursuant to the provisions of this Agreement, Railroad shall file a disclaimer relinquishing all Railroad's land interest within the State's right of way to the extent that the Railroad's right of way overlays State's right of way at that location. In addition, in the event that Railroad, determines, in its sole discretion, to permanently cease operations (including obtaining any regulatory approvals, if required) on and abandon the portion of the rail line running under the Amole grade separation at ADOT I-10 MP 292.35, Railroad shall file a disclaimer relinquishing all Railroad's land interest within the existing State right of way to the extent that the Railroad's right of way overlays State's right of way at that location.

g. Submit to the State a demolition plan and traffic control plan for the work prepared per State standards. Removal of existing Pantano Railroad Bridge shall also be done in accordance with Attachment A, titled Pantano RR Underpass Existing Bridge Removal Details. No work shall begin until all plans have been reviewed and approved by the State.

III. MISCELLANEOUS PROVISIONS

1. This Agreement shall remain in force and effect until completion of the work herein embraced and payment; except any provisions herein for maintenance, which shall be perpetual. Either party may cancel this Agreement upon thirty (30) days written notice to the other party at any time prior to the State advertising the grade and drain project. In case of such cancellation, the party canceling the contract shall reimburse the other party for all reasonable costs incurred as of the date of cancellation. In the event of cancellation by the Railroad the State shall not be obligated to complete any design or construction elements of the Railroad grade and drain project. No termination of this Agreement or suspension of future performance shall relieve the parties of liability for any obligation previously incurred. Notwithstanding anything herein contained, if Railroad determines on or before December 31, 2007, that (a) it will not be able to acquire the New Railroad Property or arrange for any necessary utility relocations on terms (monetary or non-monetary) satisfactory to the Railroad, or (b) the terms of any relinquishment of its existing right of way required by a third party in connection with this project are not satisfactory to the Railroad, the Railroad may terminate this Agreement without any further liability. In such case, neither party shall have responsibility to reimburse the other party for any costs it has incurred except the State shall reimburse Railroad for one-half of its costs accrued in connection with its efforts to acquire the New Railroad Property up to the date of termination. Railroad's acquisition of the necessary land on terms satisfactory to the Railroad is a condition precedent to Railroad's obligation to perform under this Agreement. If this Agreement is terminated for any reason, the State shall have no obligation to reimburse Railroad for purchasing materials for construction of new rail placement and Railroad shall within thirty (30) days of termination return any reimbursement of same that has been paid by the State.

2. The parties acknowledge that any earthen fill material used by the State or its contractors in doing the grading and drainage in the roadbed for the new track alignment may go through a settlement process and that during such settlement and seasoning period, the Railroad may be required to perform extraordinary maintenance and repair work in the event of caving, sliding, consolidation and settling of any earthen fill involved in the new track alignment. Railroad is not entitled to any further payment for settlement or seasoning.

3. This Agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

6. **Non-Availability of Funds:** Every payment or monetary obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

7. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by binding arbitration under the construction industry arbitration rules of the American Arbitration Association. As a condition precedent to a party seeking arbitration, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation.

8. The parties may amend or modify this Agreement effective only upon mutual written consent.

9. Any notice or other communication required or permitted to be given under this Agreement ("Notices") shall be in writing and shall be (i) personally delivered; (ii) delivered by a reputable overnight courier; or (iii) delivered by certified mail, return receipt requested and deposited in the U.S. Mail, postage prepaid. Telecopy notices shall be deemed valid only to the extent they are (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice in the manner described above within three (3) business days thereafter. Notices shall be deemed received at the earlier of actual receipt or (i) one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (ii) three (3) business days following deposit in the U.S. Mail, as evidenced by a return receipt. Notices shall be directed to the parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other in the manner described above;

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007

Union Pacific Railroad Company
1400 Douglas St. – STOP 0910
Omaha, Nebraska 68179-0910
Attn: William E. Wimmer,
Vice President-Engineering

10. Railroad and State shall execute a Construction and Maintenance Agreement for the grade separation structure before advertisement of the Railroad Grade and Drain project. Railroad shall have no obligation to pay any costs for the grade separation structure. No work shall commence on the grade separation structure until Railroad's Assistant Vice President Engineering – Design, or his authorized representative, has approved the final 100% completed plans for the grade and drain structure and all of State's contractors have executed the Railroad's then current Contractor's Right of Entry Agreement and have obtained the insurance as required in said Contractor's Right of Entry Agreement.

11. Railroad shall have a period of ninety (90) days to operate over the new rail before it is obligated to cease its operation on that portion of its Lordsburg Subdivision rail line which is to be vacated pursuant to this Agreement, in order to insure that the new track and signal facilities are fully operational.

12. State shall reimburse the Railroad for any reimbursable costs upon receipt of invoices supported by such evidence of as may be reasonable required by the State. The State shall make reasonable efforts to reimburse Railroad for such costs within sixty (60) days after receipt of invoices. Invoices, in triplicate, should be submitted to: State address shown on page 7. Upon completion of the Project, Railroad shall have up to six (6) months to prepare a final invoice covering all reimbursable costs incurred by Railroad. All material records for all charges and expenditures for which reimbursement will be claimed from the State shall be available at all reasonable times (during normal business hours at the Railroad's principal place of business in Omaha, NE) for a period of five (5) years after completion of the work to allow the State to check and audit the invoices submitted by the Railroad. So far as practicable, separate records shall be maintained by the Railroad on all items and accounts which shall constitute the basis of information from which the invoices will be prepared.

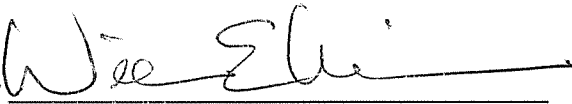
13. The Railroad may, but is not required, to remove the tracks, ballast and signals at the Amole grade separation (ADOT Milepost 292.35). If the Railroad elects to remove Railroad improvements at the Amole crossing, Railroad shall; 1) leave the land in a safe condition, and 2) be responsible for all costs associated with the work, including but not limited to any related environmental expenses.

14. Any time periods in this Agreement for performance of a parties obligation shall be extended by the number of days of delay caused by Force Majeure. During the period of any Force Majeure, the party invoking Force Majeure shall use all reasonable efforts to meet its obligations under this Agreement. "Force Majeure," for the purposes of this Agreement, is defined as conditions beyond the reasonable control of the obligated party including, without limitation, any Act of God, unusual weather, strikes or other labor disputes, civil disturbance, material shortages or delays caused by third party not acting for the Railroad or the State. The party invoking Force Majeure must promptly provide written notice to the other party as to the nature of the Force Majeure, its projected duration and when the condition of Force Majeure has ended. If any performance is extended under this provision, all other items shall be equitably extended.

15. A schedule attached as Exhibit D reflects the parties intent in regard to scheduling of the activities related to this project. In case of a discrepancy, the dates listed in the body of this Agreement govern over those in Exhibit D.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

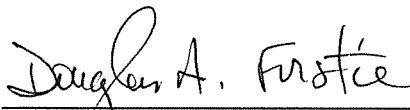
UNION PACIFIC RAILROAD COMPANY

By 
WILLIAM E. WIMMER
VP ENGINEERING

Date JUNE 22, 2006

STATE OF ARIZONA

Department of Transportation

By 
DOUGLAS A. FORSTIE, P.E.
Deputy State Engineer, Operations

Date 07-17-06

JPA 03-132

APPROVAL OF THE UNION PACIFIC RAILROAD COMPANY ATTORNEY

I have reviewed the above referenced Agreement, between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the UNION PACIFIC RAILROAD COMPANY and declare this Agreement to be in proper form and within the powers and authority granted to the Railroad under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

Dated this 22nd day of June, 2006.

Bernard Sullivan
Attorney

EXHIBIT "A"

UNION PACIFIC RAILROAD COMPANY

CERTIFICATE OF AUTHORITY

I, Barbara M. Holder, Assistant Secretary of UNION PACIFIC RAILROAD COMPANY, a Delaware corporation (the "Company"), do hereby certify that in accordance with the By-Laws of the Company, as amended on July 1, 2005, the Management Policy Statement adopted by the Board of Directors, as amended on February 26, 2004, and general and specific delegations of authority pursuant thereto, William E. Wimmer, as Vice President-Engineering of the Company, has been delegated the requisite authority on behalf of the Company, to approve, execute and deliver the Agreement between the State of Arizona, acting by and through its Department of Transportation, and the Company dated June 22, 2006, and to execute all documents associated therewith.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of UNION PACIFIC RAILROAD COMPANY this 22nd day of June, 2006.



Assistant Secretary

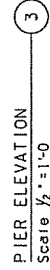
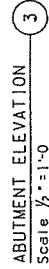
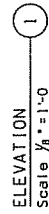
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JPA 03-132



pantano line change, dgn thename,sg

F.A.R.A. REGION	STATE	PROJECT NO.	SHEET NO.	TOTAL SHEETS	AS BUILT
9	ARIZ.				



BRIDGE LOCATION
Lordsburg Subdivision, Track No. 2
Mile Post 1014.12
14.1 Miles East of Vail, AZ

ARIZONA DEPARTMENT OF TRANSPORTATION INTERMODAL TRANSPORTATION DIVISION		DATE	
BRIDGE GROUP		STATION	
STA. 1509+		PROJECT NO.	
PANTANO RR UNDERPASS		EXISTING BRIDGE REMOVAL DETAILS	
PANTANO RR UNDERPASS		SECTION	
PANTANO RR UNDERPASS		INVESTIG. NO.	
PANTANO RR UNDERPASS		TRACS NO.	
PANTANO RR UNDERPASS		OF	

Activity Description	Early Start	Early Finish	2005	2006	2007	2008	2009	2010
RR to Complete Utility Relocations	22OCT05	31DEC07	JNDJFEMAMJJJA	SNDJFEMAMJJJA	SNDJFEMAMJJJA	SNDJFEMAMJJJA	SNDJFEMAMJJJA	SNDJFEMAMJJJA
RR to Acquire the New Railroad Property	22OCT05	31DEC07						
Notice of Agreement Cancel 30 Days Prior to Adv.	22OCT05	01DEC07						
RR to Provide PS&E for State Review and Approval	22OCT05	30SEP07						
State to Complete Hydrology Report for Railroad	22OCT05	01JUL06						
RR to Provide Plan, Profile and Final Footprint	22OCT05	01JUN06						
State to Complete Preliminary Geotech Report		01NOV05A						
RR Grade & Drain Design	01MAY06	30SEP07						
Sign JPA		30JUN06						
Approx. State Grade & Drain Construction	01MAR08	31MAY09						
RR to Invoice the State for RR Phase II	01JUL08	30JUN09						
RR Early Acquisition of Materials for Phase II	31MAY08	30JUN09						

Start Date	20MAY04	I-10 Marsh Station - Phase I	Exhibit D reflects the parties intent in regard to scheduling the commercially reasonable efforts related to the project.
Finish Date	30JUN08	Tracs: H6101 01L	
Data Date	21OCT05	Exhibit D	
Run Date	26MAY06 14:05	JPA 03-132	
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